

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

Mr. Justice Md. Ashfaqu Islam

Mr. Justice Md. Abu Zafor Siddique

CIVIL APPEAL NOS.153-154 OF 2018 WITH CIVIL PETITION FOR LEAVE TO APPEAL NOS. 3939 OF 2017, 3283 OF 2017, 3538 OF 2018, 2586 OF 2018, 1414 OF 2018, 4229 OF 2018, 4230 OF 2018, 4675 OF 2018, 1704 OF 2019, 1705 OF 2019 AND 1706 OF 2019.

(From the judgment and orders dated 12.11.2017, 30.03.2017, 03.07.2017, 18.07.2017, 04.01.2018, 17.10.2017, 27.05.2018, 13.05.2018 and 22.01.2019 passed by the High Court Division in Writ Petition Nos.10033 of 2017, 10746 of 2016, 1734 of 2017, 7760 of 2017, 7276 of 2017, 8093 of 2017, 10926 of 2016, 12883 of 2016, 3991 of 2018, 12480 of 2016, 9762 of 2016 and 15917 of 2017 respectively).

Government of the People's Republic : ...Appellants.
of Bangladesh, represented by the (In C.A. No.153 of 2018)
Secretary, Ministry of Education,
Bangladesh Secretariat Building,
Ramna, Dhaka and another.

Md. Alauddin : ...Appellant.
(In C.A. No.154 of 2018)

Government of the People's Republic : ...petitioners.
of Bangladesh, represented by the (In C. P. Nos.3939 of 2017,
Secretary, Ministry of Education, 3283 of 2017, 3538 of 2018,
Bangladesh Secretariat Building, 2586 of 2018, 1414 of 2018,
4229 of 2018, 4230 of 2018,
Ramna, Dhaka and others. 4675 of 2018, 1704 of 2019,
1705 of 2019 and 1706 of 2019)

-Versus-

Md. Abdul Monnaf and others. : ...Respondents.
(In C.A. Nos.153-154 of 2018)

Kaunia College, represented by Md. : ...Respondents.
Shaheen Sarker, Member of the (In C.P. No.3939 of 2017)
Governing Body of Kaunia College,
Kawnia, Rangpur and another.

Md. Toib Ali and another. : ...Respondents.
(In C.P. No.3283 of 2017)

Md. Monu Miah, Assistant Professor, : ...Respondents.
Political Science and others. (In C.P. No.3538 of 2018)

Md. Shams Uddin and others. : ...Respondents.
(In C.P. No.2586 of 2018)

- Md. Habibur Rahman and another. : ...Respondents.
(In C.P. No.1414 of 2018)
- Lashkerpur Degree Mohabidyaniketon, : ...Respondents.
represented by its Principal A.N.M. (In C.P. No.4229 of 2018)
Monirul Islam and another.
- Md. Nojer Ali and others. : ...Respondents.
(In C.P. No.4230 of 2018)
- Md. Tazul Islam and others. : ...Respondents.
(In C.P. No.4675 of 2018)
- Chowhali S.B.M. College, represented : ...Respondents.
by its Principal (in Charge) Mohammad (In C.P. No.1704 of 2019)
Monirul Bari Bablu and another.
- Charjabbar Degree College, represented : ...Respondents.
by Oli Uddin Ahmed being dead his heirs (In C.P. No.1705 of 2019)
1(a) Saydul Haque Bhuiyan Donner and
Founder Member, Charjabbar Subornochar,
Noyakhali and others.
- Sheikh Shahidul Alam. : ...Respondent.
(In C.P. No.1706 of 2019)
- For the Appellants/Petitioners. : Mr. Sk. Md. Morshed, Additional
(In C.A. No.153 of 2018) Attorney General with Mr.
Samarendra Nath Biswas, Deputy
Attorney General, Mr. Mohammad
Saiful Alam, Assistant Attorney
General and Mr. Sayem Mohammad
Murad, Assistant Attorney
General instructed by Ms. Sufia
Khatun, Advocate-on-Record.
- For the Appellant. : Mr. Sk. Md. Morshed, Additional
(In C.A. No.154 of 2018) Attorney General with Mr.
Samarendra Nath Biswas, Deputy
Attorney General, Mr. Mohammad
Saiful Alam, Assistant Attorney
General and Mr. Sayem Mohammad
Murad, Assistant Attorney General
instructed by Mr. Md. Zahirul
Islam, Advocate-on-Record.
- For the Petitioners. : Mr. Sk. Md. Morshed, Additional
(In C.P. Nos.3939 of 2017, 3283
of 2017, 3538 of 2018, 2586 of
2018, 1414 of 2018, 4229 of
2018, 4230 of 2018, 4675 of 2018
1704-1706 of 2019) Attorney General with Mr.
Samarendra Nath Biswas, Deputy
Attorney General, Mr. Mohammad
Saiful Alam, Assistant Attorney
General and Mr. Sayem Mohammad
Murad, Assistant Attorney General
instructed by Mr. Haridas Paul,
Advocate-on-Record, Ms. Sufia
Khatun, Advocate-on-Record and Ms.
Mahmuda Begum, Advocate-on-Record.

- For Respondent No.1. : Mr. Probir Neogi, Senior
(In C.A. No.153 of 2018) Advocate instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
- For Respondent No.10. : Mr. Zainul Abedin, Advocate-on-
(In C.A. No.153 of 2018) Record.
- For Respondent Nos.2-9. : Not represented.
(In C.A. No.153 of 2018)
- For Respondent No.1. : Mr. Probir Neogi, Senior Advocate
(In C.A. No.154 of 2018) instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.
- For Respondent Nos.2-11. : Mr. Samarendra Nath Biswas,
(In C.A. No.154 of 2018) Deputy Attorney General instructed by Ms. Sufia Khatun, Advocate-on-Record.
- For Respondent No.1. : Mr. S. M. Rezaul Karim, Advocate
(In C.P. No.3939 of 2017) instructed by Ms. Sufia Khatun, Advocate-on-Record.
- For Respondent No.2. : Not represented.
(In C.P. No.3939 of 2017)
- For Respondent Nos.1-2. : Mr. Md. Fazlur Rahman, Advocate
(In C.P. No.3283 of 2017) instructed by Mr. Md. Abdul Hye Bhuiyan, Advocate-on-Record and Mr. Syed Mahbubar Rahman, Advocate-on-Record.
- For Respondent No.1. : Mr. Sharif Uddin Chaklader,
(In C.P. No.3538 of 2018) Advocate instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
- For Respondent No.41. : Ms. Joya Bhattacharjee, Advocate
(In C.P. No.3538 of 2018) instructed by Mr. Md. Helal Amin, Advocate-on-Record.
- For Respondent Nos.2-40. : Not represented.
(In C.P. No.3538 of 2018)
- For Respondent No.1. : Mr. Mintu Kumar Mondall,
(In C.P. No.2586 of 2018) Advocate instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
- For Respondent No.28. : Mr. Syed Mahbubar Rahman,
(In C.P. No.2586 of 2018) Advocate-on-Record.
- For Respondent No.2-27. : Not represented.
(In C.P. No.2586 of 2018)

- For Respondent Nos.1-2. : Mr. Md. Fazlur Rahman, Advocate
(In C.P. No.1414 of 2018) instructed by Mr. Nurul Islam Bhuiyan, Advocate-on-Record (dead) and Mr. Syed Mahbubar Rahman, Advocate-on-Record.
- For Respondent No.1. : Mr. M. Qumrul Hoque Siddique,
(In C.P. No.4229 of 2018) Senior Advocate Mr. Md. Momin Uddin, Advocate-on-Record.
- For Respondent No.7. : Mr. M. Qumrul Hoque Siddique,
(In C.P. No.4230 of 2018) Senior Advocate Mr. Md. Momin Uddin, Advocate-on-Record.
- For Respondent No.2. : Not represented.
(In C.P. No.4229 of 2018)
- For Respondent Nos.1-6. : Not represented.
(In C.P. No.4230 of 2018)
- For the Respondents. : Mr. Md. Taufique Hossain,
(In C. P. No.4675 of 2018) Advocate-on-Record.
- For Respondent No.1. : Mr. Probir Neogi, Senior Advocate
(In C. P. No.1704 of 2019) instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.
- For Respondent No.2. : Mr. Md. Nurul Islam Chowdhury,
(In C. P. No.1704 of 2019) Advocate-on-Record.
- For Respondent No.1(a)-1(h). : Mr. Abul Khair, Senior Advocate
(In C. P. No.1705 of 2019) instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.
- For Respondent No.2. : Not represented.
(In C. P. No.1705 of 2019)
- For the Respondent. : Mr. Probir Neogi, Senior Advocate
(In C. P. No.1706 of 2019) instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
- Date of Hearing. : **The 30th & 31st January, 2024.**
- Date of Judgment. : **The 06th February, 2024.**

J U D G M E N T

Borhanuddin, J: Since both the civil appeal and connected civil petitions involve identical point of law based on similar facts as such all are taken together for hearing and disposed of by this common judgment.

Both the civil appeal arose out of the judgment and order dated 12.11.2017 passed by the High Court Division in Writ Petition No.10033 of 2017 disposing of the Rule with direction.

Brief facts are that the respondent no.1 herein as petitioner preferred the writ petition Challenging Memo No.07.00.0000.153.015.06.17-81 dated 21.03.2017 issued and signed by the writ-respondent no.7, Deputy Secretary, Finance Division, Ministry of Finance, preferring the 'Badshagonj Public High School' for nationalization at Dharmapasha Upazilla under Sunamgonj District instead of 'Janata Model High School' Dharmapasha, Sunamgonj, in violation of the guideline framed by the writ-respondent no.1 and also seeking direction upon the respondents to nationalize 'Janata Model High School' pursuant to guideline and policy of nationalization of non-Government school and college.

Background of the civil appeals as well as the civil petitions are that the Government has taken initiative for nationalization of college and school in every Upazilla of the country and accordingly, the writ-

respondent no.1 framed a guideline; The guideline sets 7(seven) prerequisites for nationalization; Accordingly, the authority of the 'Janata Model High School' filed representation with a detailed information of the school to the Prime Minister's Office through local Member of the Parliament; The Prime Minister's Office on 18.11.2014 sent a letter to the writ-respondent no.1, Secretary, Ministry of Education, for taking necessary steps for nationalization of the school; On 21.12.2014, the writ-respondent no.1 forwarded a letter to the writ-respondent no.3, Director General (DG), Department of Secondary and Higher Education, Dhaka, for collecting necessary information; On 15.01.2015, the writ-respondent no.5, Assistant Director (Secondary-1), Department of Secondary and Higher Education, Dhaka, issued a letter infavour of the respondents as well as the Head Master of the 'Janata Model High School' informing that an inspection committee has been formed for holding inspection of the school; On 13.07.2016, the writ-respondent no.5 issued a Memo bearing No.37.02.0000.106.49. 002.15-976 enclosing name of 119 schools of different upazillas, barring the school

authority from transferring movable and immovable properties of the school and spending money from the school fund in order to nationalize the schools and petitioner's school was listed in Serial No.13 in the memo; All on a sudden, the writ-respondent no.7, Deputy Secretary, Finance Division, Ministry of Finance, published a list of total 42 schools which are to be nationalized vide Memo No.07.00.0000.153.015.06.17-81 dated 21.03.2017 where the name of the 'Janata Model High School' disappeared and name of the 'Badshagonj Public High School' was listed in Serial No.33; 'Janata Model High School' was established in the year 1931 on 3.02 acres of land; On the other hand 'Badshagonj Public High School' was established in the year 1950 on 2.00 acres of land; The 'Janata Model High School' consists of 8(eight) buildings having 32 teachers and staffs, 2333 students, well equipped laboratory and library and the school is a recognized centre for J.S.C. and S.S.C. examinations; On the contrary, 'Badshagonj Public High School' consists of 5(five) buildings; The 'Janata Model High School' is situated in Dharmapasha Upazilla within 0(zero) kilometer

from the Upazilla Sadar and the 'Badshagonj Public High School' is situated about 7(seven) kilometer away from Upazilla Sadar; In the circumstances, the writ-petitioner on 12.10.2017 sent a notice demanding justice to the writ-respondents requesting nationalization of the 'Janata Model High School' but no step has been taken; As such the writ-petitioner constrained to file the writ petition and obtained a Rule Nisi.

Upon hearing the parties, the High Court Division disposed of the writ petition with a direction that the writ-respondent nos.1-10 shall perform all formalities for nationalization of the 'Janata Model High School'. The High Court Division without interfering in the process of nationalization of 'Badshagonj Public High School' observed that both the schools shall be nationalized.

Having aggrieved, the Government and the writ-respondents have filed separate petitions for leave to appeal being Civil Petition for Leave to Appeal Nos.967 of 2018 and 1337 of 2018 respectively. Both the civil

petitions were heard together and a single leave granting order passed by this Division on 12.07.2018.

Consequently, these civil appeals arose.

Mr. Sk. Md. Morshed, learned Additional Attorney General appearing for the appellants in both the appeals submits that nationalization of school or college is a policy decision of the Government which is not a subject matter of judicial review and as such the direction given by the High Court Division is not sustainable in law. He further submits that the policy decision must be left to the Government as it alone can decide which policy should be adopted after consideration of all aspects from different angles. He again submits that the High Court Division erred in law in directing the Government for nationalization of the writ-petitioner's school without considering that mere preparation of the list for inspection does not confer any legal right to the writ-petitioner as such the impugned judgment and order with direction is liable to be set-aside. He lastly submits that the High Court Division erred in law in directing the Government to include 'Janata Model High School'

alongwith the 'Badshagonj Public High School' for nationalization which is beyond the guideline framed by the Government. In support of his submissions, the learned Additional Attorney General referred to the case of Raypur L.M. Pilot Model High School vs. The Government of Bangladesh and others, reported in 6 LM (AD) (2019) 269 and also referred to an unreported decision dated 22.05.2022 passed by this Division in Civil Petition for Leave to Appeal No.4549 of 2018.

On the other hand, Mr. Probir Neogi learned Advocate appearing for the respondents submits that by the memo dated 13.07.2016 the respondents listed the writ-petitioner's school in Serial No.13 for nationalization imposing certain restrictions and injunctions which were complied with by the school and thus the school authority, students and guardians legitimately expected that the school would be nationalized and as such the High Court Division rightly disposed of the Rule issuing necessary directions. He also submits that the 'Janata Model High School' fulfilled the prerequisites of the guideline framed for nationalization of schools and

colleges and as such dropping the name of the writ-petitioner's school is a malafide act of the respondents which is by its nature an act without jurisdiction as such the High Court Division justly and legally passed the impugned judgment and order with direction. In support of his submissions he referred to the case of *M/S. Hajee Mohammad Ali & sons vs. Burma Eastern Ltd. and others*, reported in 38 DLR (AD) 41 and the case of *Abdul Rauf and others vs. Abdul Hamid Khan and others*, reported in 17 DLR (SC) 515.

Heard the learned Advocate for the respective parties and perused the impugned judgment and order passed by the High Court Division and other papers/ documents contained in the paper books.

It appears that the petitioner's school was listed for consideration to be nationalized vide memo dated 13.07.2016 with direction to do and/not to do some acts. Accordingly, authority of the school acted in compliance with the said instructions to its disadvantage. Fairly on this aspect, this Court is of the opinion that the school authority has acquired legal right to know as to why

their school has not been nationalized. The students, guardians, teachers of the school as well as inhabitants of the locality were mentally prepared for nationalization of the school and they acted to their disadvantage in various ways for such nationalization but subsequently vide memo dated 21.03.2017 they came to know that the name of another school was inserted instead of their school for reasons not known to them. This should not be the policy decision of the Government. The act of the writ-respondent in dropping the name of the petitioner's school is a clear violation of the principle of natural justice. True, nationalization of a particular school is not a matter of judicial review and it is also true that the policy decision must be left to the Government. But the court can consider whether a decision making authority exceeded its power, committed an error of law, violated rules of natural justice, reached a decision which no reasonable man would have reached or otherwise abuse its power.

In view of the facts and circumstances, we are not inclined to interfere with the impugned judgment and

order alongwith the direction passed by the High Court Division. But considering the discussions made above and for the reasons stated therein, we are modifying direction of the High Court Division passed in the operative portion of the impugned judgment and order in the following manner:

"We, therefore direct the respondent nos.1-10 to do all the formalities for nationalization of 'Janata Model High School' in near future when occasion arose."

The other portions of the impugned judgment and order passed by the High Court Division shall remain as it is.

Accordingly, both the Civil Appeal Nos.153-154 of 2018 are disposed of with the above modification and direction. Connected Civil Petitions for Leave to Appeal are disposed of in the light of the judgment and order delivered in C.A. Nos.153-154 of 2018.

No order as to costs.

J.

J.

J.

J.